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A large, faint, light-gray background graphic that combines a stylized globe with a silhouette of a fire hydrant. The globe is represented by a large arc, and the fire hydrant is positioned on the right side, partially overlapping the globe's arc.

## Research and Reports

Firefighters Presumptions of Covered Injuries in  
Workers' Compensation  
DRAFT April 6, 2004

## **Firefighter Presumptions of Covered Injuries in Workers' Compensation**

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Below is an overview of the issue of special presumptions of coverage for injuries or diseases sustained by firefighters. Questions to the IAABC staff about these presumptions arise frequently. This is intended to be a brief orientation and limited review of such laws.

Many states have some sort of presumption language for heart, lung and other conditions. There are typically lots of court cases to define what "presumption" means.

Some examples:

### **Oregon**

The phrase "and resulting from their employment as firefighters" has been a part of ORS 656.802(1)(b) since the court decisions in *Wright v. SAIF*, 289 Or 323 (1980), and *Johnson v. The City of Roseburg*, 86 Or App 344 (1987) which had interpreted the "firefighter's presumption" statute. The Board further observed that the same phrase was retained in ORS 656.802(4), which defines an occupational disease for purposes of triggering the "firefighter's presumption." Similarly, the Board reasoned that subsection (4) (like subsection (2) of the former statute that was applicable when *Wright* and *Johnson* issued) set forth the "firefighter's presumption" itself (i.e., "[a]ny condition or impairment of health arising under this subsection shall be presumed to result from a firefighter's employment."

### **Michigan**

Sec. 405(2) creates a presumption for heart and lung conditions for police and firefighters. The presumption according to the Michigan courts only removes "the initial burden of claiming work- relationship." The employer still has broad scope to rebut the claim.

### **New Hampshire**

Workers' compensation - firefighter statutory presumption in RSA 281-A:17, I

### **North Dakota**

The presumption in N.D.C.C. § 65-01-02(18)(d) (1995) creates the presumption that firefighters lung condition or disease is suffered in the line of duty. The legislature narrowed the presumption in N.D.C.C. § 65-01-15 to confine the occupational-lung disease presumption to nonsmokers.

The presumption shifts the burden of going forward with evidence and the burden of persuasion from the claimant to the ND Bureau. *Sunderland v. North Dakota Workmen's Comp. Bureau*, 370 N.W.2d 549, 552 (N.D. 1985). Therefore, under the North Dakota view of presumptions, the Bureau is required to prove the nonexistence of the presumed fact is more probable than its existence.

### **Nevada**

Below is a recent Attorney General's opinion on firefighter presumption:

"The Nevada statute that creates a conclusive presumption of occupational heart disease for firefighters and police officers is NRS 617.457, which provides in pertinent part: Notwithstanding any other provision of this chapter, diseases of the heart of a person who, for 5 years or more, has been employed in a full-time continuous, uninterrupted and salaried occupation as a fireman or police officer in this state before the date of disablement are conclusively presumed to have arisen out of and in the course of the employment. . . .

Initially, we note that the Nevada Supreme Court has held that the conclusive presumption of occupational heart disease set forth in NRS 617.457(1) applies to any firefighter [or police officer<sup>1</sup>] who was once employed in such occupation on a full-time continuous, uninterrupted and salaried basis for five years or more, but who was not so employed at the time the heart disease was diagnosed, despite the intervening length of time since separation from public service as a firefighter or police officer.

## **Virginia**

The Virginia statute establishes that respiratory diseases and other ailments "shall be presumed to be occupational diseases suffered in the line of duty . . . unless such presumption is overcome by a preponderance of competent evidence to the contrary." VA Code § 65.2-402(A).

Quoting Virginia App. Ct. decision of Dec. 2002, *Henrico Co v Woody*:

[T]he purpose of the statutory presumption is to establish by law, in the absence of evidence, a causal connection between certain occupations and death or disability resulting from specified diseases. . . .

"To overcome the statutory presumption the employer must show, by a preponderance of the evidence, both that 1) the claimant's disease was not caused by his employment, and 2) there was a non-work-related cause of the disease. Thus, if the employer does not prove by a preponderance of the evidence both parts of this two-part test, the employer has failed to overcome the statutory presumption."

Among the other states that are believed to have firefighter presumptions of injury are: Texas, New Jersey, Maryland and Wisconsin. This is merely a partial listing.

Such presumptions are also common in Canada. In Canada the presumptions are often extended to forest fire fighters as well as traditional urban personnel.